

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

PREFERRED CAROLINAS REALTY, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	1:13-CV-00181-TDS-LPA
	)	
AMERICAN HOME REALTY NETWORK	)	
INC., D/B/A NEIGHBORCITY.COM,	)	
	)	
Defendant.	)	

**PLAINTIFF’S RENEWED MOTION TO COMPEL PRODUCTION OF DOCUMENTS  
PRIOR TO DEPOSITION OR, IN THE ALTERNATIVE, AWARD COSTS AND FEES  
AND ITS REQUEST FOR EXPEDITED CONSIDERATION WITHOUT FURTHER  
BRIEFING**

Plaintiff Preferred Carolinas Realty, Inc. (‘Preferred Carolinas’) filed a motion on November 22, 2013, to compel Defendant to complete its document production by November 27, 2013. (Dkt. No. 37.) To avoid an adverse ruling, Defendant represented at the expedited hearing that it had completed its production by delivering a hard-drive to Preferred Carolinas’ counsel earlier that day, except for some financial documents that counsel was going to discuss with his client that afternoon. Based on this representation, the Court entered a November 27, 2013 Minute Entry denying Preferred Carolinas’ motion to compel as moot and holding that no fee-shifting was appropriate.

It now appears that Defendant’s representations were not accurate. Although Preferred Carolinas received a hard-drive, the drive contains over 220,000 documents, the vast majority of which are nonresponsive to Preferred Carolinas’ discovery requests. As one example, as set out in the accompanying Declaration of Scott E. Murray, out of a sample of 11,156 reviewed by Preferred Carolinas’ counsel, 8,979 documents (or, approximately 80%) were email notifications

regarding voicemails left for the recipient. These notifications appear to have been identified as potentially responsive because they contain the word “copyright” at the bottom of the email notification from Digium, Inc., the voicemail vendor. But these documents do not appear to have any relationship to this case, and they should have been removed from the collection prior to Defendant’s production.

Additional documents produced by Defendant include emails relating to marital issues involving the family of Defendant’s owner; emails from airlines regarding travel plans, copies of unrelated software license agreements, and emails from dating websites. None of these documents are responsive to Preferred Carolina’s document requests. None of these documents should have been produced.

The parties’ ESI Stipulation and the Federal Rules of Civil Procedure required Defendant to take reasonable steps to remove nonresponsive documents prior to production. (Dkt. No. 36 at 2.)<sup>1</sup> Defendant does not appear to have taken such steps. Instead, faced with a pending motion to compel, it appears that Defendant dumped an un-reviewed set of documents on Preferred Carolinas to avoid an adverse ruling and shift the time and costs associated with the review to Preferred Carolinas.

By letter dated December 9, 2013, Preferred Carolinas identified the above issues and asked Defendant to provide additional information on the steps it took to comply with its

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<sup>1</sup> See *Johnson v. Kraft Foods N. Am., Inc.*, 236 F.R.D. 535, 540 (D. Kan. 2006) (stating that a document dump is generally unacceptable); *Cleveland Const., Inc. v. Gilbane Bldg. Co.*, No. CIV A. 05-471, 2006 WL 2167238, \*5-6 \* (E.D. Ky. July 31, 2006) (“[A document dump] does not comply with the final sentence in Rule 33(d) which requires specificity.”); *Breunlin v. Vill. of Oak Park*, No. 07 C 46272008, WL 2787473, \*4. (Rule 34 is designed to preclude litigants from document dumping); *McKesson Info. Solutions LLC v. Epic Sys. Corp.*, 242 F.R.D. 689, 692 (N.D. Ga. 2007) (granting a plaintiff’s motion to compel and awarding monetary sanctions where a defendant responded to an Interrogatory request with a 7,300 page “document dump” the defendant contended “may contain the information requested by [the plaintiff]”); *John W. Daniel & Co., Inc. v. Durham Pub. Sch. Bd. of Educ.*, 1:07CV61, 2008 WL 2781164, \*1 (M.D.N.C. Mar. 7, 2008) (granting a defendant’s motion to compel where the plaintiff supplied 40,000 documents and argued that it was the defendant’s burden to review the documents for responsiveness).

production obligations by noon today. A copy of this letter is attached to the Murray Declaration. Defendant did not respond.

Given the above, Preferred Carolinas respectfully renews its motion to compel Defendant to complete its document production prior to the depositions of its witnesses, which are currently scheduled for December 18, 2013. Preferred Carolinas asks that the Court order Defendant to complete its production by December 13, 2013.

In the alternative, Preferred Carolinas asks the Court to order Defendant to reimburse Preferred Carolinas for the costs and fees associated with reviewing Defendant's documents, and the costs and fees associated with this motion. *See Preferred Care Partners Holding Corp. v. Humana, Inc.*, 08-20424-CIV-UNGARO, 2009 WL 982460, \*3 (S.D. Fla. Apr. 9, 2009) (granting monetary sanctions of fees and costs – including the costs of document review – where a defendant negligently dumped 10,000 documents and withheld 60,000 possibly responsive documents). Preferred Carolinas asks the Court for permission to submit these fees and costs upon completion of its document review.

The Court previously granted Preferred Carolinas' request to consider its motion to compel on an expedited basis without additional briefing. Given that depositions of Defendant are scheduled for December 18, 2013, Preferred Carolinas asks that the Court similarly consider this renewed motion on an expedited basis without further briefing.

Respectfully submitted,

By: s/Scott E. Murray

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been filed electronically this 10th day of December, 2013. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system:

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